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REMARKS

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The pending claims under consideration in the application are claims 32-36, 38-40, 42, 44, 46-48 and 50-52.

Request for Rejoinder Renewed

Applicants respectfully request rejoinder of method claims 1-11, 13, 15, 17-19 and 21-31, upon allowance of the product claims 32-36, 38-40, 42, 44, 46-48 and 50-52.¹ To that end, withdrawn method claims 1, 19 and 22 have been amended for consistency with the amended product claims, as further discussed below, with the exception that these withdrawn claims have not been amended to exclude the use of the precursors wherein the metal is aluminum (Al).

Claim Amendments/New Claims

Claims 1, 22, 32, 39, 51 and 52 have been amended to include the negative recitation "but excluding compounds of the formula $(Me_2N)_{4-b}TiX_b$, wherein b is from 1 to 2 inclusive." This use of a negative limitation is fully consistent with MPEP 2173.05(i) and is fully supported by the specification as well as the claims. Indeed, by this amendment, the positive recitation of this group of compounds is now being cancelled from claims 19, 36 and 44. It is well established that positively recited elements may be explicitly excluded in the claims (See, e.g., *In re Johnson*, 558 F.2d 1008, 1019, 194 USPQ 187,196 (CCPA 1977)).

Claims 22, 32, 39, 51 and 52 have been amended to correct the formula for the determination of the variable "b". Support for this amendment is explicitly found in Paragraphs 9-28 and 51-57 of the application as published.

Finally, claims 32 and 39 have been further amended to exclude aluminum from the list of suitable metals.

¹ Rejoinder was previously requested in the response to the June 15, 2004 Office Action, filed July 29, 2004, and again in each subsequent response, and again is requested in the present response.

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Rejections of Claims and Traversal ThereofRECEIVED
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Anticipation by Oshito

In the June 23, 2006 Office Action, claims 32, 33, 35, 36, 39, 44, 51, and 52 were rejected under 35 U.S.C. §102(b) as being anticipated by Oshito (JP2000036473A). Oshito is cited as disclosing a precursor with a formula the same as in claim 32 in which M is Ti, X is Cl and R₁ and R₂ are methyl.

By the foregoing amendment, Applicants have explicitly excluded precursor compounds of the formula (Me₂N)_{4-b}TiX_b, wherein b is from 1 to 2 inclusive. Thus, the rejection of claims 32, 33, 35, 36, 39, 44, 51, and 52 as being anticipated by Oshito is rendered moot and the claims as amended are in allowable condition.

Anticipation by Neumayer et. al.

In the June 23, 2006 Office Action, claims 32 and 39 were rejected under 35 U.S.C. §102(b) as being anticipated by Neumayer et. al. (US 5,675,028). Neumayer et. al. are said to disclose bisamido azides of aluminum wherein certain intermediates therefor correspond to compounds according to the formula of claim 32. Though it is acknowledged that only gallium compounds are shown, it is stated that Neumayer also teaches aluminum.

By the foregoing amendment, Applicants have amended claims 32 and 39 to explicitly exclude aluminum. This exclusion has not been made to withdrawn method claims 1 or 22 inasmuch as Neumayer et. al. only teach the cited compounds as intermediates for making precursors for chemical vapor deposition, NOT as compounds that themselves are employed as precursors for chemical vapor deposition. Neumayer et al. in such respect teaches away from Applicants' invention as claimed. In light of the amendments, the rejection of claims 32 and 39 as being anticipated by Neumayer et. al. is rendered moot and the claims, as amended, are in allowable form.

Allowable Subject Matter

Applicants acknowledge the Office's indication as to the allowability of claims 34, 38, 40, 42-48 and 50 if rewritten in independent form, including all limitations of the base claim and any intervening claims.

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However, Applicants have deferred any such action inasmuch as Applicants submit that all claims, including independent claims 32 and 39, from which the aforementioned claims depend, are presently allowable and thereby obviate the need to rewrite claims 34, 38, 40, 42-48 and 50 in independent form.

Fees Payable

No added claims fees are due or payable as a result of the foregoing amendment. No changes have been made in the number of independent or total number of claims. Nevertheless, authorization is hereby given to charge any deficiency in applicable fees that may be deemed properly payable for this response, to Deposit Account No. 08-3284 of Intellectual Property/Technology Law.

CONCLUSION

Applicants have satisfied all requirements for patentability. The claims are free of the art and fully comply with the requirements of 35 U.S.C. §102 and §103. It therefore is requested that Examiner Everhart reconsider the patentability of the pending claims in light of the distinguishing remarks herein, and withdraw the rejections made in the June 23, 2006 Office Action, thereby placing the application in condition for allowance. A Notice of Allowance is merited and respectfully requested. In the event that any issues remain, Examiner Everhart is requested to contact the undersigned attorney at (919) 419-9350 to resolve same, so that this application can be passed to issue at an early date.

Respectfully submitted,



Steven J. Hultquist
Reg. No. 28021
Attorney for Applicants

INTELLECTUAL PROPERTY/
TECHNOLOGY LAW
Phone: (919) 419-9350
Fax: (919) 419-9354
Attorney File No.: 2771-605 (7486)